

IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, IOWA DEPARTMENT
OF PERSONNEL,

Petitioner,

v.

IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,

Respondent,

STATE POLICE OFFICERS COUNCIL,

Intervenor.

CASE NO. AA 2304

RULING ON PETITIONER'S
APPLICATION TO REOPEN RECORD

On September 28, 1994, petitioner's application to reopen the record in the above-entitled cause came on for hearing before the Court. All parties appeared by their respective counsel. After hearing the arguments of counsel, reviewing the court file and being fully advised in the premises, the Court now enters the following ruling.

The background of petitioner's application may be summarized as follows. The State Police Officers Council (SPOC) filed a petition for amendment of bargaining unit seeking to add the Park Ranger job classifications to the SPOC bargaining unit. On June 18, 1992, a unit amendment hearing was held before an administrative law judge. At the hearing, testimony was presented that park attendants and Department of Natural Resource aides were subordinates of park rangers. Testimony was also presented that the park attendants were not members of any bargaining unit.

The ALJ issued a proposed decision on February 12, 1993, finding that the park rangers were not eligible for inclusion in the SPOC bargaining unit because they are supervisors, excluded from collective bargaining pursuant to Iowa Code Section 20.4(2). SPOC appealed the

proposed decision to the Public Employment Relations Board. In its application to reopen the record, IDOP alleges that on June 22, 1993, AFSCME/Iowa Council 61 bargaining unit was amended to include the classification of park attendant, and that the agency record was never reopened to include this change of fact. On October 13, 1993, PERB entered its decision on appeal, amending the SPOC bargaining unit to include the park rangers classifications.

In its decision, PERB referred to the fact that the park attendants were non-bargaining unit employees. IDOP argues that this finding of fact was central to the PERB decision, that it was incorrect at the time of the decision, and that this case should now be remanded to the agency so that the decision may be reconsidered in light of the fact that the park attendants became bargaining unit employees after the initial hearing. Respondent and intervenor have both resisted the proposed remand.

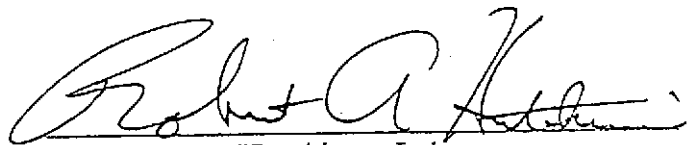
In order to grant IDOP's request for remand for additional record to be made, the Court must find that the additional evidence is both material to the issues before the agency and that there was good reason for the failure to present the evidence before the agency. Iowa Code Section 17A.19(7); Fisher v. Board of Optometry Examiners, 478 N.W.2d 609, 612 (Iowa 1991). Here the Court does not believe IDOP can meet the two requirements. The Court intimates no ruling as to whether it believes the finding of fact by the agency that the park attendants were not in a bargaining unit was necessary or important to the agency's decision. However, the Court points out that this finding of fact by the agency was correct based on the record at the hearing. What IDOP really wants to do at this point is to retry its case based upon developments since the date of trial. The Court does not believe that such a request would be proper.

Assuming that a party could seek to retry its case based upon developments following the decision of the ALJ but prior to the agency's review of the ALJ decision, then IDOP has failed to demonstrate any reason why the request was not made before the agency. It is no excuse or

reason for IDOP to suggest that it assumed that PERB would be aware of the fact that park attendants had become members of a bargaining unit because of other proceedings before the Board.

The Court concludes that IDOP has failed to establish any grounds for a limited remand or for the taking of additional evidence. The Court Administrator shall promptly issue a new briefing schedule for the parties.

Dated this 14th day of October, 1994.



Robert A. Hutchison, Judge-
Fifth Judicial District of Iowa

Copies to:

✓ Linny Emrich
Assistant Attorney General
Hoover Bldg., Second Floor
Des Moines, IA 50319

✓ Pamela Prager
Charles Gribble
Suite 1200, 317 6th Ave.
Des Moines, IA 50309-4110

✓ James H. Murphy
Public Employment Relations Board
514 E. Locust St., Suite 202
Des Moines, IA 50309

Copies Mailed 10/14/94 D.B.